

RECORDING REQUESTED BY
TUNTEX PROPERTIES INC.(U.S.A.)

WHEN RECORDED MAIL TO

NAME Department of Toxic Substances
Control

MAILING 700 Heinz, Suite 200

CITY, STATE Berkeley, California
ZIP CODE 94710-2737

OFFICIAL RECORDS OF
SAN MATEO COUNTY
ASSESSOR-COUNTY CLERK-RECORDER
WARREN SLOCUM

Recorded at Request of
TUNTEX PROPERTIES

95-136334 12/15/95 11:17

Recording Fee: 50- AMTCULOB

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S
USE

TITLE(S)

COVENANT AND AGREEMENT TO RESTRICT USE OF PROPERTY
BAYSHORE RAILYARD NORTH AREA TWO
GROUNDWATER EXTRACTION AND TREATMENT SYSTEM
BRISBANE, CALIFORNIA

95136334

1 COVENANT OF DEED RESTRICTION

2 Recording Requested By:

3 Tuntex Properties, Inc. (Brisbane)

4 When Recorded, Mail To:

5 Department of Toxic Substances Control

6 Region 2

7 700 Heinz Avenue, Suite 200

8 Berkeley, California 94710-2737

9 Attention: Barbara Cook, Chief

10 Site Mitigation Branch

11 COVENANT AND AGREEMENT
12 TO RESTRICT USE OF PROPERTY

13 Bayshore Railyard North Area

14 Area Two

15 Groundwater Extraction and Treatment System

16 Brisbane, California

17 This Covenant and Agreement ("Covenant") is made on the 25
18 day of September, 1995 by and between Tuntex Properties, Inc.
19 (Brisbane) ("Covenantor") and the Department of Toxic Substances
20 Control (the Department). Covenantor is the owner of record of
21 certain property situated in the City of Brisbane, County of San
22 Mateo, State of California, as legally described in Exhibit "A"
23 attached hereto and incorporated herein by this reference, and as
24 shown in the map as Exhibit "B" attached hereto and incorporated
25 herein by this reference (the "Property").

26 An extraction and treatment system has been installed on the
27 Property to protect against potential harm to persons or property

1 from hazardous substances which have been discovered in the
2 groundwater. Covenantor and the Department desire and intend that
3 in order to protect the present and future public health and
4 safety, the Property shall be used in such a manner as to avoid
5 damage to, or interference with, the extraction and treatment
6 system.

7 ARTICLE I

8 GENERAL PROVISIONS

9 1.01 Provisions to Run with the Land. This Covenant sets
10 forth protective provisions and conditions (collectively referred
11 to as "Restrictions"), upon and subject to which the Property shall
12 be improved, held, used, occupied, leased, sold, hypothecated,
13 encumbered, and/or conveyed. Each and all of the Restrictions.
14 shall run with the land, and pass with the Property, and shall
15 apply to, inure to the benefit of, and bind the respective
16 successors in interest thereof. Each and all of the Restrictions
17 are imposed upon that specific portion of the Property as legally
18 described in Exhibit A and as shown on the map in Exhibit B. Each
19 and all of the Restrictions are imposed pursuant to Health and
20 Safety Code Sections 25355.5 and 25356.1, and run with the land
21 pursuant to Health and Safety Code Section 25355.5. Each and all
22 of the Restrictions are for the benefit of and enforceable by the
23 Department.
24

25 1.02 Concurrence of Owners Presumed. All purchasers, lessees,
26 or possessors of any portion of the Property shall be deemed by
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1 their purchase, leasing, or possession of such Property, to be in
2 accord with the foregoing and to agree for and among themselves,
3 their heirs, successors, and assignees, and the agents, employees,
4 and lessees of such owners, heirs, successors, and assignees, that
5 the Restrictions as herein established must be adhered to for the
6 benefit of future Owners and Occupants and that their interest in
7 the Property shall be subject to the Restrictions contained herein.

8 1.03 Incorporation into Deeds and Leases. Covenantor desires
9 and covenants that the Restrictions set out herein shall be
10 incorporated by reference in each and all deeds and leases of any
11 portion of the Property.
12

13 ARTICLE II

14 DEFINITIONS

15 2.01 Department. "Department" shall mean the California State
16 Department of Toxic Substances Control and shall include its
17 successor agencies, if any.

18 2.02 Improvements. "Improvements" shall mean all buildings,
19 roads, driveways, regrading, and paved parking areas, constructed
20 or placed upon any portion of the Property.

21 2.03 Occupant(s). "Occupant(s)" shall mean those persons
22 entitled by ownership, leasehold, or other legal relationship to
23 the exclusive right to occupy any portion of the Property.

24 2.04 Owner(s). "Owner(s)" shall mean the Covenantor or its
25 successors in interest, including heirs, and assigns, who hold
26 title to all or any portion of the Property.
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1 the integrity of the groundwater extraction and treatment
2 system installed on the Property pursuant to the requirements
3 of the Department and the San Francisco Bay Regional- Water
4 Quality Control Board (RWQCB).

5 f. Any proposed alteration of the extraction and treatment
6 system shall require written approval by the Department and
7 the RWQCB.

8 g. The Owner(s) shall monitor the extraction and treatment
9 system regularly to insure the integrity of the system as
10 required in the Operations and Maintenance Agreement and the
11 NPDES permit issued by the RWQCB.

12 h. The Owner(s) shall notify the Department of each of the
13 following: 1) The type, cause, location and date of any
14 disturbance to the extraction and treatment system which could
15 affect the ability of the system to extract hazardous
16 substances from the groundwater and 2) The type and date of
17 repair of such disturbance. Notification to the Department
18 shall be made by registered mail within ten (10) working days
19 of both the discovery of system disturbance and the completion
20 of repairs.

21 i. The Owner grants the Department and other government
22 agencies an easement to the Property for inspection,
23 surveillance, monitoring, maintenance, and other purposes as
24 deemed necessary by the Department in order to protect the
25 public health and safety.
26
27

3.02 Conveyance of Property. The Owner(s) shall take all reasonable steps to provide at least seven (7) days advance notice to the Department of any sale, lease, or other conveyance of the Property or an interest in the Property to a third person. The Department shall not, by reason of the Covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property.

3.03 Enforcement. Failure of the Owner(s) to comply with any of the requirements, as set forth in paragraph 3.01 shall be grounds for the Department, by reason of the Covenant, to require that the Owner(s) modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the Department to file civil and criminal actions against the Owner(s) as provided by law.

3.04 Notice to Buyers, Lessess, and Renters. Prior to sale, lease or rental of the Property, Owner(s) shall give written notice to buyers, lessees, and renters stating that there is residual groundwater contamination as specified in Health and Safety Code Section 25359.7(a).

ARTICLE IV

VARIANCE AND TERMINATION

4.01 Variance. Any Owner(s) or, with the Owner(s)' consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with

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1 Section 25233, Health & Safety Code.

2 4.02 Termination. Any Owner(s) or, with the Owner's(s')
3 consent, any Occupant of the Property or a portion thereof may
4 apply to the Department to terminate this deed restriction as to
5 all or any portion of the Property. Such application
6 shall be made in accordance with Section 25234, Health & Safety
7 Code.

8 4.03 Term. Unless terminated in accordance with paragraph
9 4.02 above, by law or otherwise, this Covenant shall continue in
10 effect in perpetuity.

11
12 ARTICLE V

13 MISCELLANEOUS

14 5.01 No dedication Intended. Nothing set forth herein shall
15 be construed to be a gift or dedication, or offer of a gift or
16 dedication, of the Property or any portion thereof to the general
17 public or for any purposes whatsoever.

18 5.02 Notices. Whenever any person gives or serves any notice,
19 demand, or other communication with respect to this Covenant, each
20 such notice, demand, or other communication shall be in writing and
21 shall be deemed effective 1) when delivered, if personally
22 delivered to the person being served or to an officer of a
23 corporate party being served or an official of a government agency
24 being served, or 2) three (3) business days after deposit in the
25 mail if mailed by United States mail, postage paid certified,
26 return receipt requested:
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To: "Covenantor"
Tuntex Properties, Inc. (Brisbane)
150 Executive Park Boulevard #4200
San Francisco, California 94134
Attn: General Manager

Copy to: Department of Toxic Substances Control
Region 2
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attn: Chief, Site Mitigation Branch

Copy to: SF Bay - Regional Water Quality Control Board
2101 Webster Street
Oakland, California 94610
Attn: Project Manager

5.03 Partial Invalidity. If any portion of the Restrictions or terms set forth herein or is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.05 Recordation. This instrument shall be executed by the Covenantor and by the Site Mitigation Branch Chief, California Department of Toxic Substances Control. This instrument shall be recorded by the Covenantor in the County of San Mateo within ten (10) days of the date of execution.

5.06 Reference. All references to Code sections include successor provisions.

1 5.06 Reference. All references to Code sections include
2 successor provisions.

3 IN WITNESS WHEREOF, the parties execute this Covenant as of
4 the date set forth above.

5 OWNER: Inter Properties, Inc. (Brisbane)
6 By: [Signature]
7 Title: General Manager
8 Date: 9/13/95
9

10
11 DEPARTMENT OF TOXIC SUBSTANCES CONTROL
12 By: Barbara J Cook
13 Barbara Cook
14 Chief, Site Mitigation Branch, Region 2
15 Date: 9/25/95
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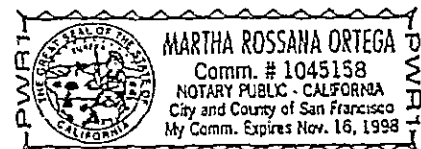
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1
2 STATE OF CALIFORNIA

3 COUNTY OF San Francisco

4
5 On this 13th day of September, in the year 1995,
6 before me Martha Rossana Ortega, a Notary Public in
7 and for said state, personally appeared Kirk Li
8 personally known to me or proved to me on the basis of satisfactory
9 evidence to be the person whose name is subscribed to the within
10 instrument and acknowledged to me that he executed the same in his
11 authorized capacity, and that by his signature on the instrument
12 the persons, or the entity upon behalf of which the person acted,
13 executed the instrument.
14

15
16 WITNESS my hand and official seal.



17
18
19 Signature Martha Rossana Ortega

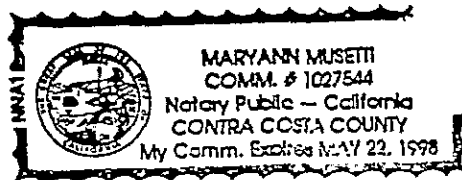
1 STATE OF CALIFORNIA)

2 COUNTY OF ~~Alameda~~)

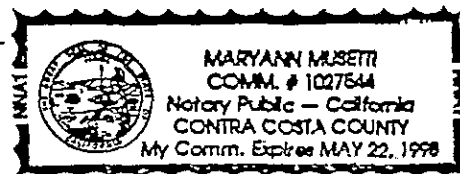
3 Contra Costa)

4
5 On this 25th day of September, in the year 1995,
6 before me MaryAnn Musetti, a Notary Public in
7 and for said state, personally appeared Barbara J. Cook,
8 personally known to me or proved to me on the basis of satisfactory
9 evidence to be the person whose name is subscribed to the within
10 instrument and acknowledged to me that she executed the same in her
11 authorized capacity, and that by her signature on the instrument
12 the person, or the entity upon behalf of which the person acted,
13 executed the instrument.
14

15
16 WITNESS my hand and official seal.



17
18
19 Signature MaryAnn Musetti



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EXHIBIT A

Job # 95957

LEGAL DESCRIPTION OF PROPOSED DEED RESTRICTIONAREA 2Revised February 13, 1995

All that certain real property situate in the City of Brisbane, County of San Mateo, State of California, described as follows:

Beginning at a point on the northerly boundary line of the County of San Mateo, which point is distant thereon N.89°51'18"E. (N89°49'30"E. by deed), 925.00 feet from a monument on said line, which monument is distant along said line S.89°49'30"W., 6.38 feet from its intersection with the easterly right of way line of Bayshore Highway, said Point of Beginning is further described as a point on the southerly boundary line of Lot No. 8 as shown upon the Parcel Map recorded in Book 16 of Parcel Maps at Page 40, Official Records of the City and County of San Francisco, which point is distant on said line N89°51'18"E., 502.24 feet from the most southerly angle point in said line;

Thence leaving said line S.0°10'30"E., 261.52 feet;

Thence S.57°00'00"W., 440.00 feet;

Thence S.0°10'30"E., 300.00 feet;

Thence S.89°49'30"W., 360.00 feet;

Thence N.16°55'21"E., 288.25 feet;

Thence N.0°10'30"W., 27.20 feet;

Thence S.89°49'30"W., 13.90 feet;

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Thence N.0°10'30"W., 20.00 feet;

Thence N.89°49'30"E., 13.90 feet;

Thence N.0°10'30"W., 417.80 feet;

Thence S.89°49'30"W., 150.00 feet;

Thence N.0°10'30"W., 59.93 feet to a point in the aforementioned northerly boundary line of San Mateo County,

Thence along said line N.89°51'18"E. (N.89°49'30"E. by deed), 795.00 feet to the Point of Beginning.

Comprising 8.770 acres, more or less.



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L No. 8 (16 P.M. 40 C.C. of S.F.)

--- 925.00 to mon.

... 502.24 to angle point

cc DETAIL*

N. 0° 10' 30" W. 59.93'
S. 89° 49' 30" W. 150.00'

N. 89° 51' 18" E. 795.00'

North boundary line of
San Mateo County

point of Beginning

S. 0° 10' 30" E 261.52'

8.770 ± Acres
(AREA 2)

A 40.00'

S 75° 00' 00" W.

9513833A



1" = 100'

A 17.80'

N. 0° 10' 30" W.

13.90'

N. 89° 49' 30" E

N. 0° 10' 30" W. 20.00'

S. 89° 49' 30" W.

13.90'

N 16° 55' 21" E 288.25'

S. 89° 49' 30" W 360.00

S. 0° 10' 30" E 300.00

Monument

6.38'

Byshore

Hwy

N. 89° 51' 18" E 925.00'

795.00'

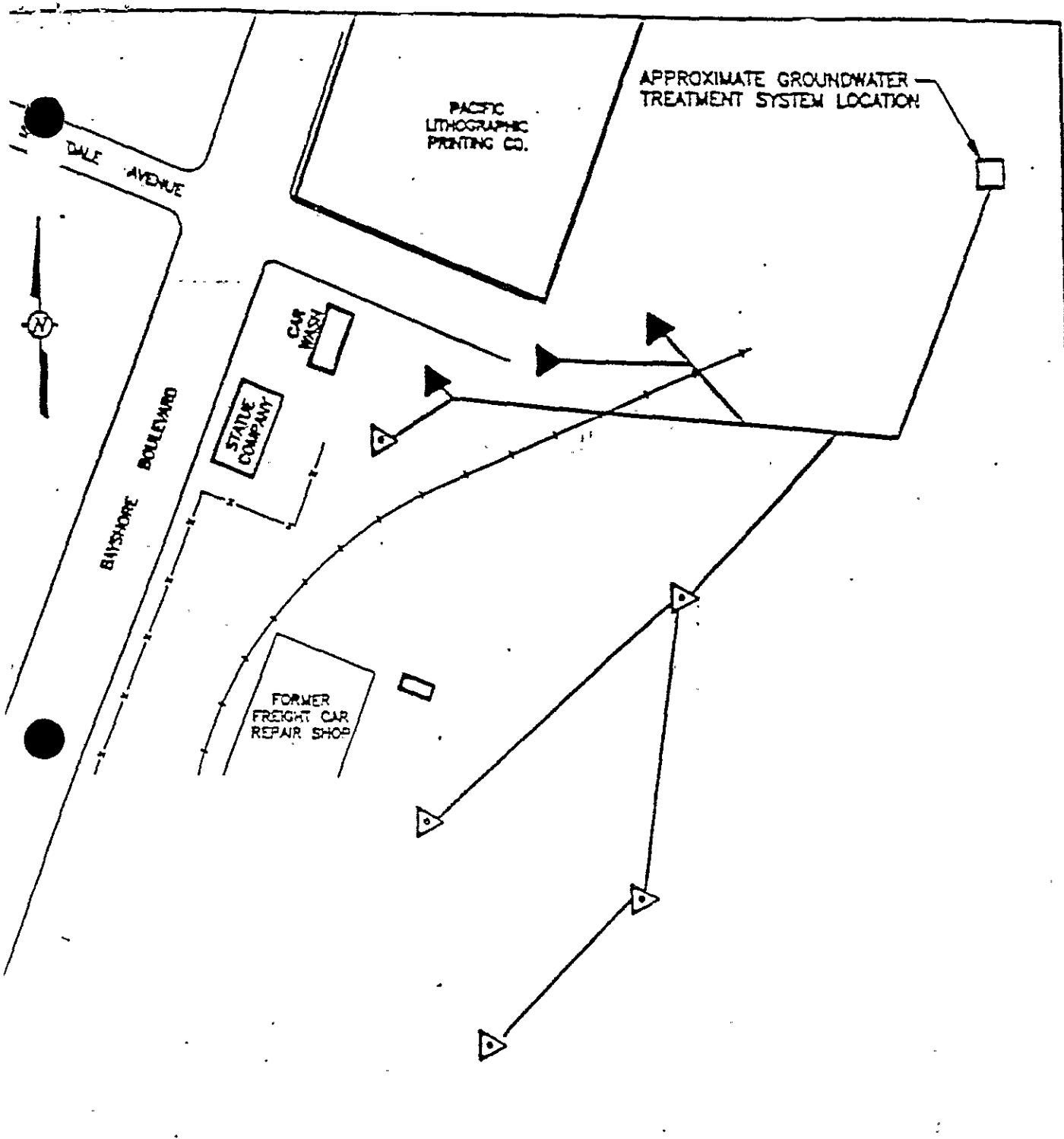
DETAIL
(No Scale)

EXHIBIT B

PLAT
TO ACCOMPANY
Legal Description

Revised Feb. 13, 1995

95136334



LEGEND

- △ APPROXIMATE A-ZONE SAND EXTRACTION WELL LOCATION
- ▲ APPROXIMATE A-ZONE FILL EXTRACTION WELL LOCATION
-

SCALE

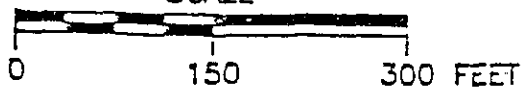


EXHIBIT C

GROUNDWATER TREATMENT
SYSTEM PLOT PLAN
PREPARED FOR
TUNTEX PROPERTIES, INC.
SAN FRANCISCO, CALIFORNIA



INTERNATIONAL
TECHNOLOGY
CORPORATION